IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5832 of 2021

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Shree Vishnu Vishal Paper Mills Pvt. Ltd. a company incorporated under the Companies Act having its Office at 404, N.P. Centre New Dak Bunglow road, Patna through its authorized Signatory Mukesh Kumar Singh Son of Sri Kameshwar Singh, Resident of Bachri, Akhgaon, Sandesh, District- Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, Bihar, Patna having its Office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of State Tax, North Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

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Date : 20-01-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

i) the order dated 31.12.2019 (as contained in Annexure –8 Series) passed by the respondent.2 for the period 2015 – 16 be quashed.

ii) the notice of demand dated 31.12.2019 (as contained in Annexure –8 Series) issued by the respondent no.2 for the period 2015 – 16 be quashed.

iii) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

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Petitioner has prayed for quashing of the order dated 31.12.2019 passed by Respondent No. 2 namely the Joint Commissioner of State Tax, North Circle, Patna and the notice of demand under Section 25 and Section 39 of the Bihar Value Added Tax Act, 2005 (Notice Id- N120284432447340) dated 31.12.2019 (Annexure- 8 series).

The order appears to be *ex parte* in nature.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Assessing Authority for deciding the case afresh. Also, the case shall be decided on merits. Also, during pendency of the case, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

However, having heard learned counsel for the parties as also perused the record made available, we are of the considered view that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, *ex facie*, we form an opinion that the order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed *ex parte* in nature, does not

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assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, *ex parte* in nature, passed in violation of the principles of natural justice, entails civil consequences.

As such, on this short ground alone, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 31.12.2019 passed by Respondent No. 2 namely the Joint Commissioner of State Tax, North Circle, Patna and the notice of demand under Section 25 and Section 39 of the Bihar Value Added Tax Act, 2005 (Notice Id- N120284432447340) dated 31.12.2019 (Annexure- 8 series);

(b) Petitioner undertakes to deposit ten per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks;

(c) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Assessing Officer. However, if it is ultimately found that the petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order;

(d) We also direct for de-freezing/de-attaching of the

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bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately;

(e) Petitioner undertakes to appear before the Assessing Authority on 14th of February, 2022 at 10:30 A.M., if possible through digital mode;

(f) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(g) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(h) During pendency of the case, no coercive steps shall be taken against the petitioner.

(i) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(j) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(k) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

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(l) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(m) Liberty reserved to the petitioner to challenge the order, if required and desired;

(n) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(o) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(p) We have not expressed any opinion on merits and all issues are left open;

(q) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

Learned counsel for the respondents undertakes to

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communicate the order to the appropriate authority through electronic mode.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	21.01.2022
Transmission Date	

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